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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/380,211	11/08/1999	EVA SIMMONS	000500-195	2334

21839 7590 05/21/2003

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EXAMINER
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KIDWELL, MICHELE M

ART UNIT	PAPER NUMBER
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3761

DATE MAILED: 05/21/2003

21

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/380,211

Applicant(s)

SIMMONS ET AL.

Examiner

Michele Kidwell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 7-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 22-25 is/are allowed.
- 6) ☒ Claim(s) 7-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 20, 2003 has been entered.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 7 – 8 and 16 – 18 are rejected under 35 U.S.C. 102(e) as anticipated by Roe (US 5,607,760).

Regarding claims 7 and 18, Roe discloses an absorbent article with longitudinally extending side extremities (figure 3), an absorbent body (540) disposed between a liquid-impermeable bottom sheet (530) and a liquid-permeable upper sheet (520) and at

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least one longitudinally extending elastic liquid barrier (550) of essentially liquid-impervious material as set forth in col. 8, lines 50 – 56 through the incorporation of Dragoo (US 4,795,454) which discloses barrier made of essentially liquid-impervious material in col. 10, lines 54 – 57. Dragoo also discloses a barrier fasted to the upper or bottom sheet along or adjacent to a respective side edge extremity of the article (col. 4, lines 39 – 47) and having a free sealing edge facing towards a wearer as set forth in figure 2. Likewise, Roe discloses an article in which at least the sealing edge is treated with a non-adhesive sealing medium which will smear the abutment skin part and thereby increases a liquid-skin wetting angle when the article is donned as set forth in col. 10, lines 18 – 21 and col. 25, lines 26 – 32.

Roe specifically discloses an article wherein petrolatum is applied to leg cuffs of a diaper. While Roe does not explicitly state that while in use the petrolatum will at least partly fill out any through penetrating pores, it is inherent that the petrolatum, when applied to the leg cuff that is intended to come into contact with the wearer's skin, will at least partly fill out any through penetrating pores. Roe states that pressure and friction from the wearer's weight and motion contribute to the transfer of the lotion from the article to the wearer, thereby inferring that the

With reference to claim 8, Roe discloses the article wherein the sealing edges are coated with a sealing medium in an amount sufficient to smear the abutment part as set forth in col. 25, lines 26 – 32.

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With respect to claim 16, Roe discloses a sealing medium that is essentially rigid and viscous at room temperature and sufficiently fluid at body temperature to smear the skin of the wearer as set forth in col. 9, line 50 to col. 10, line 17.

As to claim 17, Roe discloses the sealing medium to be petrolatum as set forth in col. 15, lines 60 – 61.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 9 – 15 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe (US 5,607,760).

As to claims 9 – 12, Roe discloses an article with the sealing medium applied in the claimed amounts as set forth in col. 24, lines 1 – 6.

The difference between Roe and claims 9 – 12 is the provision that the lotion composition is specifically applied to the leg cuffs.

It would have been obvious to one of ordinary skill in the art to modify the leg cuffs of Roe to employ petrolatum because Roe states that the lotion composition may be applied to any part of the diaper wherein it can come into contact with the wearer's skin, including the leg cuffs, as set forth in col. 25, lines 26 – 32.

The difference between Roe and claims 13 – 15 is the provision that the sealing medium gives a wetting angle above a certain degree.

Roe discloses the use of petroleum in col. 15, lines 60 – 61.

Because the applicant discloses that petroleum is a suitable sealing medium on page 14 of the specification, it can be reasonably assumed, is not inherent, that the petrolatum would provide a sealing member meeting the wetting angle requirements of the claimed invention.

If not inherent, it would at least be obvious that the petrolatum does provide a sealing member with a wetting angle and determining the optimum or workable range of that wetting angle would require only ordinary skill in the art.

The difference between Roe and claim 19 is the provision that the sealing medium is provided in an amount that is sufficient to both partly fill out any through penetrating pores and to smear said abutment skin part.

Roe discloses that the sealing medium may be applied to any part of the diaper to smear an abutment skin part as set forth in col. 25, lines 26 – 32.

It is inherently disclosed that Roe provides a sufficient amount of sealing medium to partly fill out any through penetrating pores because Roe provides a sealing medium on a portion of the article that is to come into contact with the skin of the wearer. Roe discloses that pressure and friction from the wearer's weight contributes to the transferring of the sealing medium from the article to the skin (col. 25, lines 19 – 24), therefore, it is known that the sealing medium is provided on both the article and the skin and it is inherent that any sealing medium provided on the article in an attempt to

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transfer the medium from the article to the skin will at least partly fill out any through penetrating pores.

Claims 20 – 21, are rejected under 35 U.S.C. 103(a) as being unpatentable over Roe (US 5,607,760) and in further view of Kitaoka (US 5,342,342).

The difference between Roe and claim 20 is the provision that the absorbent article include an essentially liquid-impermeable top sheet which is intended to lie against a wearer and which includes elastic for shaping the article to the wearer's body, and includes apertures intended to lie in register with an anus and a urethra orifice of a wearer, around which apertures elastically puckered sealing edges are disposed in the top sheet.

Kitaoka teaches an absorbent article including an essentially liquid-impermeable top sheet (14) which is intended to lie against the wearer and which includes elastic for shaping the article to the wearer's body and includes an aperture intended to lie in register with an anus and a urethra orifice of a wearer, around which apertures elastically puckered sealing edges are disposed in the topsheet as set forth col. 2, lines 52 – 53 and figure 1.

It would have been obvious to one of ordinary skill in the art to modify the absorbent article of Roe by employing an essentially liquid-impermeable top sheet which is intended to lie against a wearer and which includes elastic for shaping the article to the wearer's body, and includes an aperture intended to lie in register with an anus and a urethra orifice of a wearer, around which apertures elastically puckered sealing edges are disposed in the top sheet because the inclusion of such allows

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excretion to be reliably guided to an opening formed in the second topsheet without apprehension that the excretion might partially spread over the area of the second topsheet extending outside of the opening as taught by Kitaoka in col. 4, lines 22 – 28.

The examiner again notes that Roe provides the general concept of providing lotion on the elastic edges that come into contact with the wearer's skin in order to alleviate chafing and provide improved containment. Therefore, it would have been obvious to one of ordinary skill in the art to coat any elastic member that comes into contact with the wearer's skin with the composition as taught by Roe.

As to claim 21, see the rejection of claim 19.

### ***Response to Arguments***

Applicant's arguments filed February 20, 2003 have been fully considered but they are not persuasive.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., a sealing medium which is typically hydrophobic and which provides an increase in liquid-skin wetting angle) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

With respect to the applicant's argument that Roe does not teach a sealing medium which is typically hydrophobic and which provides an increase in liquid-skin



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wetting angle, the examiner disagrees. Petrolatum is a typically hydrophobic medium with a wetting angle of  $100^{\circ}$ . The applicant's specification supports the fact that the petrolatum is a suitable medium for increasing the liquid-skin wetting angle. While Roe does teach the addition of a surfactant when using the petrolatum, Roe also discloses the addition of the surfactant at amounts as low as 0.1% (col. 23, lines 10 – 13) which are unlikely to affect the increase in the liquid-skin wetting angle caused by the addition of petrolatum to the skin.

Additionally, the applicant argues that applying lotion to the leg cuffs is not the same as the treatment of the sealing edges of the absorbent article as claimed. The examiner also disagrees with this statement. The claims are essentially directed to a free sealing edge being treated with a sealing medium which smears the abutment part of a wearer's skin and thereby increases the liquid-skin wetting angle. Inasmuch as the applicant has supported the sealing edges being "treated" with a sealing medium, Roe discloses the same. The sealing medium is applied to the leg cuffs and the article is brought into contact with the wearer, thereby allowing the sealing medium to smear an abutment part of the wearer's skin. As a result, the liquid-skin wetting angle will increase because the normal  $74^{\circ}$  wetting angle of the skin is now subjected to the  $100^{\circ}$  wetting angle of the petrolatum which allows the liquid-skin wetting angle to increase as supported by page of the applicant's specification.

Applicant's arguments with respect to claims 20 – 21 have been considered but are moot in view of the new ground(s) of rejection.

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***Allowable Subject Matter***

Claims 22 – 25 are allowed.

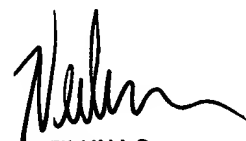
The following is a statement of reasons for the indication of allowable subject matter: the overall claimed combination of an absorbent article wherein only a free sealing edge or elastically puckered sealing edges that surround an aperture intended to lie in register with an anus and urethra orifice of a wearer are treated with a non-adhesive sealing medium has neither been anticipated nor rendered obvious by the prior art of record.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michele M. Kidwell whose telephone number is 703-305-2941. The examiner can normally be reached on Monday thru Friday, 7:00am - 3:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on 703-308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-3590 for regular communications and 703-305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist, whose telephone number is 703-308-0858.

  
Michele Kidwell  
May 15, 2003

  
WEILUN LO  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700